IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 187 OF 2006
IN
SUIT NO. 2647 OF 1996.

Punjab National Bank. ... Appellant.
Versus.
M/s.Gratex Industries ltd. & anr. ... Respondents.

Shri Sudhan Amare for the Appellant.

Shri Ramesh Kukreja for the Respondents.

CORAM : KSHITIJ R.VYAS, C.J., &
ABHAY S.OKA, J.

DATE : 27th June, 2006.

P.C.:

1. Punjab National Bank, original Defendant No.1, has challenged the judgment and decree dated 13th October 2003 passed in Suit No.2647 of 1996 by the learned single Judge. The Plaintiff filed a suit for recovery of an amount of Rs.27,65,744.00, which according to the Plaintiff was voluntarily withdrawn by the original Defendant No.2 from the Plaintiff's account with Defendant No.1/Appellant forging the signature of the authorised signatory of the Plaintiff. The learned single Judge passed a decree relying on the uncontroverted facts. It is an admitted position that none of the Defendants have filed written statement nor cross-examined the witness of the Plaintiff, nor remained present when the matter was heard by the learned single Judge. In the circumstances an ex-parte

decree came to be passed by the learned single Judge.

2. In the appeal the Appellant tried to explain the lapses on the part of the Appellant. It is not necessary to refer to the same at this stage inasmuch as the learned Counsel appearing for Respondent No.1 fairly stated that Respondent No.1 has no objection if the ex-parte decree is set aside and the suit is decided on merits, provided that Respondent No.1 is allowed to withdraw the principal decretal amount i.e. Rs.5,06,000/-.

3. In view of this we pass the following order:

i) The ex-parte decree dated 13th October 2003 passed in Suit No.2647 of 1996 is set aside and the suit is restored to file.

ii) The Appellant shall deposit in this Court the principal sum of Rs.5,06,000/- within a period of two weeks from today. Respondent No.1 shall be entitled to withdraw the same by furnishing bank guarantee for the said amount of the Appellant-bank or any other nationalised bank.

iii) The Appellant shall file written statement in the suit within a period of eight weeks and the learned single Judge shall hear and decide the suit expeditiously.

4. Appeal is allowed in the above terms with no order as to costs.

CHIEF JUSTICE

ABHAY S.OKA, J.